

1353

United States

Circuit Court of Appeals

For the Ninth Circuit.

1363

GEORGE E. JACKSON, Doing Business Under the
Trade Name and Style of SOUTHERN
ARIZONA AUTO COMPANY,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the
District of Arizona.

FILED

JUN 21 1923

FILER: Wm. W. Johnson
CLERK

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Circuit Court of Appeals
For the Ninth Circuit.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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**TOWNSEND, STOCKTON & DRAKE, Phoenix,
Arizona,**

**JOS. A. MUSGROVE, 820 Trust & Savings Bldg.,
Los Angeles, Calif.,
Attorneys for Plaintiff in Error.**

**FREDERICK H. BERNARD, United States At-
torney, Tucson, Arizona,
Attorney for Defendant in Error.**

**In the District Court of the United States, for the
District of Arizona.**

C—1872.

**United States of America,
District of Arizona,—ss.**

Information.

**Violation of Sec. 3. Tit. 2. Act Oct. 28, 1919 (Nat.
Pro. Act). Importing, Transporting and Pos-
session of Intoxicating Liquor.**

**BE IT REMEMBERED, That Frederick H.
Bernard, Attorney of the United States, for the Dis-
trict of Arizona, who prosecutes in behalf and with
the authority of the United States, comes into court
on this 4th day of January, A. D. 1923, in the No-
vember, 1922, term thereof, and for the United
States gives the Court to understand and be in-
formed that one Jewel A. Bostick, on the 10th day
of April, A. D. 1922, and within the said District
of Arizona, did wilfully, unlawfully and knowingly**

import into the United States of America, from the United States of Mexico, certain intoxicating liquor, to wit, one hundred sixty-two quarts of tequila, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SECOND COUNT.

And the said Frederick H. Bernard, United States Attorney as aforesaid, gives the Court to further understand and be informed, that Jewel A. Bostick, on the 10th day of April, A. D. 1922, and within the said District of Arizona did wilfully and unlawfully transport in a certain automobile, to wit, a Hudson Supersix Touring automobile, bearing Arizona 1922 license No. 2-1807, engine No. 44601, Model J-6879, certain intoxicating liquor, to wit, approximately one hundred and sixty-two quarts of tequila, from a certain point, the exact location of which is to affiant unknown, to a certain point approximately sixteen miles north of Nogales, Arizona, towards Tucson, Arizona, in the State and District of Arizona, the exact location of which is to affiant unknown, he, the said Jewel A. Bostick then and there having no legal permit to so transport the [1*] said intoxicating liquor, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

THIRD COUNT.

And the said Frederick H. Bernard, United States Attorney as aforesaid, gives the Court to further understand and be informed that Jewel A.

*Page-number appearing at foot of page of original certified Transcript of Record.

Bostick, on the 10th day of April, A. D. 1922, and within the said District of Arizona, did wilfully and unlawfully possess one hundred and sixty-two quarts of intoxicating liquor, to wit, tequila, which said intoxicating liquor was fit for beverage purposes, he, the said Jewel A. Bostick then and there having no legal permit to so possess the said intoxicating liquor, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

That the said defendant has been bound over by a United States Commissioner for this District, and the record of the proceedings had before said Commissioner are on file in this court, and are made a part of this information, and the affidavit thereto.

WHEREFORE, the said Frederick H. Bernard, United States Attorney for the District aforesaid, prays the consideration of this Court here in the premises and that due process of law may be awarded against the said Jewel A. Bostick, defendant, in this behalf, to make his answer to the United States touching and concerning the premises.

Dated at Tucson, Arizona, this 4th day of January, A. D. 1923.

FREDERICK H. BERNARD,
United States Attorney for the District of Arizona.

Frederick H. Bernard, being first duly sworn, on oath deposes and says: That he has read the foregoing information, and knows the contents thereof; that the matters and things therein contained are true as he verily believes.

FREDERICK H. BERNARD.

Subscribed and sworn to before me this 4th day of January, A. D. 1923.

C. R. McFALL,
Clerk District Court of the United States for the District of Arizona.

[Endorsed]: United States vs. J. A. Bostick.
Information. Filed Jan. 4, 1923. C. R. McFall,
Clerk, United States District Court for the District of Arizona. [2]

UNITED STATES OF AMERICA.

In the District Court of the United States, for the District of Arizona.

At the November Term, 1922, held at Tucson, in said District, on January 29, 1923—Hon. WM. H. SAWTELLE, District Judge, Presiding.

Case No. C—1872 (TUCSON).

UNITED STATES OF AMERICA,

vs.

JEWEL A. BOSTICK,

Defendant.

Judgment and Commitment.

The defendant, Jewel A. Bostick, is present in person, and with his counsel, George O. Hilzinger, Esq.

The United States Attorney for the District of Arizona is present on behalf of the United States. And this being the time heretofore fixed for passing judgment on the defendant aforesaid, the said de-

fendant is now duly informed by the Court of the nature of the charge contained in the Information against him for the crime of wilfully, unlawfully and knowingly importing certain intoxicating liquor, in violation of Section 3, Title II, National Prohibition Act, as charged in the first count of said information; and of wilfully and unlawfully transporting certain intoxicating liquor, in violation of said section, title and act, as charged in the second count of said information; of his arraignment at the bar of this court on said charges, and of his plea of guilty thereto heretofore entered.

The said defendant is now asked if he has any legal cause to show why judgment should not be pronounced against him; and no sufficient cause being shown or appearing to the Court, the Court renders its judgment, as follows:

That, whereas you, Jewel A. Bostick, having been duly convicted in this Court of the crime aforesaid, it is found by the Court that you are so guilty of said crime.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, and the judgment and sentence of the Court is that you, Jewel A. Bostick, be fined upon the first count of the information the sum of \$500.00; and that you shall stand committed to the County Jail of Pima County, Arizona, until said fine is paid or until you are discharged by due process of law. [3]

It is the further judgment of the Court that you be fined upon the second count of the information the sum of \$500.00; that when you shall have paid

the fine assessed on the first count of the information or shall have been discharged from custody by due process of law as to said fine, you then and thereupon shall be committed to said jail until you pay the fine assessed on the second count of the information, or until otherwise discharged by due process of law.

Commitment under the first count herein to date from January 25, 1923.

The said defendant is now remanded to the custody of the United States Marshal for said district, to be by him delivered into the custody of the proper officer of said jail.

AND IT IS FURTHER ORDERED, that a certified copy of this judgment shall be sufficient warrant for the said Marshal to take, keep, and safely deliver the said defendant into the custody of the proper officers of said jail, and a sufficient warrant for the officers of said jail to keep and imprison the said Jewel A. Bostick. [4]

November, 1922, Term—TUCSON.

In the District Court of the United States, for the
District of Arizona.

Hon. WILLIAM H. SAWTELLE, United States
District Judge, Presiding.

Minute Entry of January 25, 1923.

No. C—1872 (TUCSON).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JEWEL A. BOSTICK,

Defendant.

**Minutes of Court—January 25, 1923—Arraign-
ment and Plea.**

The defendant, Jewel A. Bostick, is present in person and with his counsel, George O. Hilzinger, Esquire. Said defendant is now duly arraigned on the charge contained in the information *herein*, and being called on to plead thereto, enters a plea of Guilty to the counts of said information charging unlawful transportation and importation of intoxicating liquor. Now, on motion of the United States Attorney, the count of said information charging unlawful possession of intoxicating liquor is hereby dismissed. The defendant is committed to the custody of the Marshal to await sentence. [5]

November, 1922, Term—TUCSON.

In the District Court of the United States, for the
District of Arizona.

Hon. M. T. DOOLING, United States District Judge
For the Northern District of California,
Specially Assigned, Presiding.

Minute Entry of March 15, 1923.

No. C—1872 (TUCSON).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. A. BOSTICK,

Defendant.

**Minutes of Court—March 15, 1923—Hearing of
Petition of Southern Arizona Auto Company.**

The petition of the Southern Arizona Auto Company for return of the automobile seized in this case comes on regularly for hearing this day. The United States Attorney appears for the Government, and no one appears for the petitioner.

The petition is submitted, and by the Court taken under advisement. [6]

November, 1922, Term—TUCSON.

In the District Court of the United States, for the
District of Arizona.

Hon. M. T. DOOLING, United States District Judge
For the Northern District of California,
Specially Assigned, Presiding.

Minute Entry of April 20, 1923.

No. C—1872 (TUCSON).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. A. BOSTICK,

Defendant.

**Minutes of Court—April 20, 1923—Order Denying
Petition of Southern Arizona Auto Company.**

The petition of George E. Jackson, doing business under the trade name and style of Southern Arizona Auto Company, for the return of the automobile seized in this case, having been submitted to the Court, and by the Court taken under advisement, and the Court having fully considered the same, and being advised in the premises, does now ORDER that the said petition be, and the same is hereby denied, and that the usual order of sale issue in this case. [7]

In the District Court of the United States, for the
District of Arizona.

No. C—1872 (TUCSON).

UNITED STATES OF AMERICA

vs.

J. A. BOSTICK.

Order of Sale.

The defendant, Jewel A. Bostick, having heretofore, to wit, on the 25th day of January, A. D. 1923, entered his plea of guilty of transporting intoxicating liquor in violation of Section 3, of Title II of the Act of Congress, approved October 28th, 1919, known as the Federal Prohibition Act, and the Court on said 25th day of January, A. D. 1923, having determined upon an examination of the witnesses that the said intoxicating liquor was, by the said Jewel A. Bostick, transported in and by means of a certain automobile, to wit, a Hudson Supersix touring automobile, bearing Arizona 1922 license number 2-1807, engine number 44601, model J-6879, and it further appearing to the Court that the said automobile while so transporting the said intoxicating liquor was, by virtue of the power conferred upon them by law, seized by United States Custom Inspectors R. J. Rollins and E. T. Richards, and thereafter turned over to M. E. Cassidy, United States Federal Prohibition Director for the State of Arizona, and is now in his possession.

NOW, THEREFORE, it is ordered that the said United States Federal Prohibition Director for the State of Arizona, M. E. Cassidy, deliver the said automobile to the United States Marshal for the District of Arizona; and

IT IS FURTHER ORDERED, That the said automobile be, by the said United States Marshal for the District of Arizona, sold [8] at public auction at the front door of the Federal Court Building at Tucson, Arizona, at ten o'clock A. M. on Saturday, June 9th, 1923.

IT IS FURTHER ORDERED, That the said United States Marshal publish in the "Arizona Daily Star" of Tucson, Arizona, his notice of such sale once each week for two consecutive weeks, the last publication of said notice to be at least three days before the date of said sale, and post said notice in at least three public places in the said City of Tucson, Arizona, at least three days before said sale; and make due return on what he has done pursuant to this order, and of the proceeds of said sale.

WITNESS, the Honorable WILLIAM H. SAWTELLE, Judge of said District Court, and the seal of said Court, at Tucson, in said District, this 22d of May, A. D. 1923.

[Seal]

C. R. McFALL,
Clerk of Said Court.
By R. C. McAllister,
Deputy. [9]

May Term 1923—TUCSON.

In the District Court of the United States for the District of Arizona.

Hon. WILLIAM H. SAWTELLE, United States District Judge, Presiding.

Minutes Entry of May 25, 1923.

No. C—1872—(TUCSON).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JEWEL A. BOSTICK,

Defendant;

GEORGE E. JACKSON, Doing Business Under the Trade Name and Style of SOUTHERN ARIZONA AUTO COMPANY,

Intervener.

Minutes of Court—May 25, 1923—Order Fixing Bond on Writ of Error.

It appearing to the Court that George E. Jackson, doing business under the trade name and style of Southern Arizona Auto Company, desires to prosecute a writ of error from the order denying his petition,—

IT IS ORDERED that the bond of the said George E. Jackson, doing business under the trade name and style of Southern Arizona Auto Company, on said writ of error, be fixed at the sum of

\$500.00, to be approved by the Judge of this court, and that upon the giving of such bond and its approval by the Judge of this court, that further proceedings in this case be stayed pending determination of said writ of error. [10]

In the District Court of the United States for the District of Arizona.

No. G. J.—1386.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

J. A. BOSTICK,
Defendant;

GEORGE E. JACKSON, Doing Business Under
the Trade Name and Style of SOUTHERN
ARIZONA AUTO COMPANY,
Intervener.

Petition in Intervention—Third Party Claim.

Comes now the above-named intervener, and for cause of intervention and for grounds of relief herein alleges:

I.

That this intervener is and at all the times herein mentioned was doing business under the trade name and style of Southern Arizona Auto Company, with his principal place of business located in the City of Douglas, County of Cochise, State of Arizona,

and that the business in which this intervener is and was so engaged is the buying and selling of automobiles as a retail dealer.

II.

That the defendant, J. A. Bostick, is charged by information filed herein with the transportation of intoxicating liquor in the automobile hereinafter described, in violation of Section 3, of Title II of the National Prohibition Act of October 28, 1919; that at the time of the arrest of said defendant upon said charge, the arresting officers seized and took from said defendant said automobile on the charge that said automobile was being used by the defendant for the unlawful transportation of intoxicating liquor, and which said automobile is described as follows, to wit:

One Hudson Touring Automobile, Frame number J-6879, Motor number 44601; that said automobile is now in the possession of the Federal Prohibition [11] Director for the State of Arizona, and is held by him subject to the order of this Court.

III.

That the automobile described in Paragraph II hereof was not at the time that it was so seized, and is not now, the property of said defendant; that on the 6th day of April, 1922, said automobile was sold conditionally by this intervener to the said defendant, in accordance with the terms and provisions of a certain conditional sales contract, in writing, which was executed and delivered on said date by this intervener as seller, and by said defendant as

purchaser, a true and correct copy of which said contract is hereto attached, marked Exhibit "A," and made a part of this petition; that the purchase price of said automobile was Seven Hundred Dollars (\$700.00), of which amount the sum of \$150.00 was paid on the date of said contract, and the balance of \$550.00, with interest thereon at the rate of ten (10) per cent per annum, as provided by said contract, was to be paid to this intervener in five monthly installments, as follows:

\$150.00 on the 6th day of May,	1922
\$100.00 on the 6th day of June,	1922
\$100.00 on the 6th day of July,	1922
\$100.00 on the 6th day of August,	1922
\$100.00 on the 6th day of September,	1922

That it is expressly provided in said contract, Exhibit "A," that the title to said automobile shall be and remain vested in the seller until the whole purchase price with interest thereon, as aforesaid, has been paid, and it is further provided in said contract that in the event the purchaser fails to pay any of said installments, or the interest thereon, when due, or removes or allows said automobile to be removed from the State of Arizona, without the written consent of the seller, or makes default in any of the terms or conditions of said contract, the seller shall have the right immediately, at his option, to retake possession of said automobile wherever the same may be found; and it is further provided [12] by said contract that in the event of any such default by the purchaser, the payments theretofore made by the purchaser shall be

forfeited as rental for the use of said automobile; and it is also provided in said contract that time is the essence of the contract.

It is also further provided in said contract that the seller is authorized to insure said automobile against damage or loss by fire or theft, as the interest of the seller may appear, at the cost and expense of the purchaser, and that if the purchaser fails to pay such insurance premiums when due, the seller may, at his option, pay such premiums and add the amount thereof to the purchase price.

IV.

This intervener further alleges that when said contract, Exhibit "A," was entered into, as aforesaid, the said defendant, J. A. Bostick, paid to this intervener the cash payment of \$150.00, but has failed, refused and neglected to make any other or further payments to apply on the purchase price of said automobile; that said defendant, as such purchaser, has made default and has failed, refused and neglected to make the payment of \$150.00 which was due and payable on May 6th, 1922, and has likewise failed, refused and neglected to make the four payments, or any of the four payments of \$100.00 each which became due and payable on the 6th days of June, July, August and September, 1922, and there is now due to this intervener from the said defendant, J. A. Bostick, the sum of \$550.00 of the purchase price of said automobile, and the sum of \$28.50, which latter amount this intervener paid in premiums for the insurance on said automobile against damage or

loss by fire or theft, and which said amount of insurance premiums so paid by this intervener, the said defendant has failed, refused and neglected to pay, and there is therefore due this intervener from said defendant, under the terms and conditions of said contract, the total [13] sum of \$578.50, all of which is unpaid, and no part thereof has been paid.

That by reason of said default, the said defendant, J. A. Bostick, as purchaser of said automobile, has forfeited and lost his equitable interest in and to said automobile, and all of his rights to the possession thereof, and to the payments made thereon, and by reason thereof this intervener elects to declare a forfeiture of each and all of the rights, title and interest of said defendant in and to said automobile, and elects to retake possession of said automobile, in accordance with the terms of said contract; that this intervener at all the times herein mentioned was and now is the sole owner of the legal title to said automobile, and for the reasons herein stated is now entitled to the possession thereof, and in order to obtain such possession offers to pay any just charges for storage and other costs and expenses that may be required of him by the Court.

V.

That a true and correct statement of the account between this intervener as seller, and the said defendant, J. A. Bostick, as purchaser of said automobile, in accordance with the terms of said contract, Exhibit "A," and in accordance with the facts, is as follows:

Purchase Price of Automobile	\$700.00
Insurance Premium paid by Inter-	
vener	28.50

	\$728.50
April 6, 1922—Cash payment	150.00

Balance due intervener.....	\$578.50

VI.

And this intervener further alleges that if the defendant, J. A. Bostick, transported any intoxicating liquor in said automobile, as he is charged with having done in the information filed herein, any such transportation of intoxicating liquor was not done with the knowledge, consent or connivance of this intervener [14] or of any employee, servant or agent of this intervener.

WHEREFORE, this intervener files this his third party claim in the above-entitled action, and respectfully petitions this Honorable Court to make and enter an order herein that the said automobile be released and returned to the possession of this intervener, and for such other and further relief as may be just and adequate in the premises.

JOSEPH MUSGROVE,

By F. O. McGIRR,

TOWNSEND, STOCKTON & DRAKE,

By HENDERSON STOCKTON,

Attorneys for Intervener.

United States of America,
State of Arizona,
County of Cochise,—ss.

George E. Jackson, being first duly sworn, upon his oath deposes and says: That he is the proprietor and owner of the Southern Arizona Auto Company, and is the intervener herein; that he has read the above and foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information and belief, and as to those matters that he believes the same to be true.

GEO. E. JACKSON,
Intervener.

Subscribed and sworn to before me this 30th day of September, 1922.

[Seal] J. A. CALVERT,
Notary Public in and for the County of Cochise,
State of Arizona.

My commission expires May 5, 1924. [15]

Exhibit "A."

Copies of Original Contracts.

SOUTHERN ARIZONA AUTO COMPANY.

GEO. E. JACKSON, Proprietor.

CONTRACT No. —.

THIS AGREEMENT, made and entered into this 6th day of April, A. D. 1922, by and between

the SOUTHERN ARIZONA AUTO CO., GEO. E. JACKSON, Prop., of Douglas, Arizona, party of the first part, hereinafter called the Seller, and J. A. BOSTICK, 722 E. Helen St. of Tucson, Arizona, party of the second part, hereinafter called the Purchaser:

WITNESSETH, That the Seller hereby agrees to sell to the purchaser, and the purchaser hereby agrees to buy from the seller, at the price and upon the terms and conditions hereinafter mentioned, that certain automobile described as follows, to wit:

1 Hudson Car (Used) Frame #J6879 Motor #44601.

The total purchase price of said automobile is the sum of Seven hundred and no/100 Dollars (\$700.00), payable as follows:

The sum of One hundred fifty and no/100 Dollars (\$150.00) cash, the receipt whereof is hereby acknowledged by the seller, and the balance in installments, as follows:

The sum of One hundred fifty and no/100 Dollars (\$150.00), on the 6th day of May A. D. 1922, with interest from date hereof at the rate of 10 per cent per annum, until paid, interest payable with each note.

The sum of One Hundred and no/100 Dollars (\$100.00) on the 6th day of June A. D. 1922, with interest as aforesaid.

The sum of One hundred and no/100 Dollars (\$100.00) on the 6th day of July A. D. 1922, with interest as aforesaid.

The sum of One hundred and no/100 Dollars (\$100.00) on the 6th day of August A. D. 1922, with interest as aforesaid.

The sum of One hundred and no/100 Dollars (\$100.00) on the 6th day of September A. D. 1922, with interest as aforesaid.

which said deferred payments are represented by 1-5 payment certain promissory notes bearing even date herewith, bearing interest at 10 per cent per annum, executed by the said party of the second part, payable to the order of the party of the first part herein.

It is expressly understood and agreed by and between the parties hereto as follows:

1. That the title of said automobile shall be and remain vested in the seller until the whole purchase price, with interest thereon as aforesaid, has been paid, but that the title thereto shall become vested in the purchaser whenever full payment has been made as above provided.

2. That the purchaser shall pay, when the same become due and payable, all taxes and licenses assessed or levied against or on account of said automobile.

3. The seller is hereby authorized to insure and keep insured during the life of this agreement, the said automobile, against damage to, or loss of the same by fire or theft, as the interest of the seller may appear, and to the extent of at least the sum of Five hundred fifty and no/100 Dollars (\$550.00) at the cost and expense of the purchaser, and if the purchaser fails to pay such insurance premiums

when due, the seller may, at his option, pay such premiums and add the amount thereof to the purchase price.

4. The purchaser shall be entitled to the possession of said automobile, but within the State of Arizona only, until default has been made in making any of the payments of principal or interest as hereinbefore provided, or in any of the terms or conditions of this agreement.

5. That the purchaser shall not, without the written consent of the seller, remove or allow said automobile to be removed from the State of Arizona, until full payment therefor is made, as herein provided.

6. That in the event the purchaser fails to pay any of said installments, or the interest thereon, when due; or removes or allows said automobile to be removed from without the State of Arizona, without the written consent of seller; or makes default in any of the terms or conditions of this agreement, the seller shall have the right immediately at its option, to retake possession of said automobile wherever the same may be found, and have the right to enter into and upon any premises whatsoever in which or upon which said automobile may be situated in order to recover possession thereof; and all payments theretofore made by the purchaser shall be forfeited as rental for the use of said automobile.

7. That upon full payment of said purchase price, and interest, by the purchaser, in accordance with the provisions of this agreement, the seller

shall and will, make, execute and deliver to the purchaser a bill of sale conveying title to said automobile.

8. That time is the essence of this contract.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above mentioned.

EXECUTED IN TRIPLICATE.

SOUTHERN ARIZONA AUTO CO.,

GEO. E. JACKSON, Prop.

By GEO. E. JACKSON,

(Prop.)

J. A. BOSTICK.

Witness:

W. L. WETZEL,

1300-7th St.

Exhibit "A." [15 $\frac{1}{4}$]

[Endorsements]: (On cover:) Petition in Intervention. Third Party Claim.

Received copy of the within this 2d day of October, 1922.

FRANCIS D. CRABLE,

Asst. U. S. Attorney,

Attorney for United States.

Filed Oct. 2, 1922. C. R. McFall, Clerk. By M. R. Malcolm, Deputy. Messrs. Townsend, Stockton & Drake, Phoenix, Arizona. Joseph Musgrove, Lawyer, 820 Trust and Savings Building, Main 771, Los Angeles, California, Attorney for Intervener.
[15 $\frac{1}{2}$]

In the District Court of the United States for the
District of Arizona.

No. C—1872.

THE UNITED STATES OF AMERICA

vs.

J. A. BOSTICK,

Defendant;

GEORGE E. JACKSON, Doing Business Under
the Trade Name and Style of SOUTHERN
ARIZONA AUTO COMPANY,

Intervener.

Opinion.

FREDERICK H. BERNARD, Esq., United States
Attorney, Attorney for the United States.

TOWNSEND, STOCKTON & DRAKE, Attorneys
for Intervener.

On April 6th, 1922, George E. Jackson, intervener *here*, sold to J. A. Bostick an automobile for \$700.00 receiving \$150.00 as the first payment thereon, and retaining title to the machine until the remainder of the purchase price was paid in monthly installments, the last of which was due on September 6th, 1922. The machine was delivered to Bostick on April 6th, with full dominion over it, the only restriction upon its use provided for being a condition that he should not remove the machine from the State of Arizona. On April 10th, Bostick was arrested while unlawfully transporting liquor in the

automobile, and the automobile having been seized, upon Bostick's conviction, is now subject to sale by the Court. Jackson, the seller, by intervention now claims the machine, as owner, and asks that it, or the proceeds of the sale, be turned over to him, for the reason that he had no knowledge that the machine was used, or was to be used in the unlawful transportation of liquor. [16]

In the case of U. S. vs. Montgomery, recently decided in this court, it was held that one who retaining title in himself, delivers to another upon conditional sale possession of an automobile with absolute control and dominion over it, may not recover it from the Government after its seizure in the unlawful transportation of liquor by showing that such transportation was without his knowledge or consent. In deciding that case the Court said:

“Section 26 of the National Prohibition Law provides: Whenever intoxicating liquors transported or possessed illegally shall be seized by an officer he shall take possession of the vehicle and team or automobile * * * and shall arrest any person in charge thereof. The Court upon conviction of the person so arrested shall order the liquor destroyed, and unless good cause to the contrary is shown by the owner, shall order a sale by public auction of the property seized, and the officers making the sale * * * shall pay all liens, according to their priority, which are established as being *bona fide* and as having been created with-

out the lienor having any notice that the carrying vehicle was being used or was to be used for illegal transportation of liquor.

It is to be observed that the Court shall order a sale of the car 'unless good cause to the contrary is shown by the owner.' What constitutes such 'good cause' on the part of the owner is nowhere specified, but as to a lienor it is declared sufficient to show that the lien was *bona fide* and created without the lienor having any notice that the vehicle was being used or was to be used in the illegal transportation of liquor. The difference between the provisions applicable to owners and those applicable to lienors is significant. It is not unreasonable to suppose that Congress had in mind the fact that an owner may determine who shall have the use of the vehicle, and thus in a measure control such use, while a lienor may not, because he is at no time entitled to its possession. It seems therefore to me that the 'good cause' required to be shown by the owner means something more than the lack of notice of illegal use required on the part of the lienor. I am therefore of the opinion that an owner who while retaining title in himself delivers a car on conditional sale with power to use it in any way that the buyer may desire cannot escape a forfeiture if the buyer use it unlawfully, by claiming that such unlawful use was without his knowledge. His

remedy is not against the Government by reclaiming the car, but against the buyer by collecting the remainder of the purchase price. An owner may show 'good cause' if he shows that the car was taken and used without his knowledge or consent, but where he turns it over to another for a price giving absolute control to such other, he is not in a position to show 'good cause' against a forfeiture, if the car be seized while unlawfully used in the transportation of liquor, by [17] asserting that such use was without his knowledge. Any other construction of the statute would ignore a distinction which the law itself seems to make."

To what was then said I have only this to add: when Congress provided that the owner must show "good cause" without defining what would constitute such good cause, it either intended that the Trial Court should have the discretion to say in each case whether "good cause" appeared, or it intended that there should be a long period of uncertainty in the application of this provision until the meaning of the words took shape from the various decisions of the Circuit Courts of Appeals and the Supreme Court. In the case of the United State vs. Kane, 273 Fed. 275 (a conditional sale), Judge Bourquin took the former view, declaring "good cause is a term that cannot be reduced to legal certainty, and vests discretion in the Court when it has statutory authority to do a thing on good cause shown."

He also held in the same case as follows: "Even a lienor secures no relief because not involved in the offense, but only where he had no knowledge, when the lien was created, that the offense was contemplated; and an owner, with more control, can justly be held to greater accountability."

In either view I adhere to the decision in the Montgomery case:

1. Because I believe the statute requires more of the owner than of the lienor, and,
2. If the Court has the discretion, I believe it should be exercised against those who deliver the absolute and unrestricted possession to another upon conditional sale, while retaining title so as to avoid foreclosures, and enable them without going into court to forfeit all payments already made to them. [18]

It is to be further observed that the owner, by showing good cause, prevents the sale of the machine. It is only the lienor who can claim the proceeds after sale. So that the owner on conditional sale would have the machine returned to him, no matter how much has been paid thereon, or how little is due, and the interest of a defendant in the machine would thus be forfeited to the seller instead of to the Government. Sellers may avoid the difficulties presented by this construction of the statute by transferring title and taking a lien, in which case the interest of a defendant may be forfeited to the Government, and the rights of the lienor protected.

The petition of the intervener herein is therefore denied, and the automobile in question will be sold in the usual way.

April 20th, 1923.

M. T. DOOLING,
Judge.

At the request of claimant the Court now finds as a fact that claimant had no knowledge that the automobile in question was used, or was to be used in the unlawful transportation of liquor.

May 3, 1923.

M. T. DOOLING,
Judge.

[Endorsed]: Opinion and Order Denying Petition of Intervener. Filed Apr. 20, 1923. C. R. McFall, Clerk United States District Court for the District of Arizona. By R. C. McAllaster, Deputy Clerk. [19]

In the District Court of the United States for the District of Arizona.

No. C—1872.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

J. A. BOSTICK,

Defendant;

GEORGE E. JACKSON, Doing Business Under
the Trade Name and Style of SOUTHERN
ARIZONA AUTO COMPANY,

Intervener.

Petition for Writ of Error.

To the Honorable WM. H. SAWTELLE, Judge of the District Court aforesaid,

Now comes George E. Jackson, doing business under the trade name and style of Southern Arizona Auto Company, intervener above named, by his attorneys, and respectfully shows that on the 20th day of April, 1923, the Court denied the petition of intervener and entered judgment ordering the automobile involved in the above-named proceeding to be sold in the usual manner without recognition of intervener's right to a return of the same, or right in and to any proceeds from the sale of the same, notwithstanding that the Court found that intervener was the conditional vendor of said automobile and that the intervener had no knowledge that said automobile was used or was to be used in the unlawful transportation of liquor.

Your petitioner, feeling himself aggrieved by the said verdict and judgment entered thereon as aforesaid, herewith petitions the Court for an order allowing him to prosecute a writ of error to the Circuit Court of Appeals of the United States for the Ninth Circuit under the laws of the United States in such cases made and provided. [20]

WHEREFORE, premises considered, your petitioner prays that a writ of error do issue that an appeal in this behalf to the United States Circuit Court of Appeals aforesaid, sitting at San Francisco, California, in said Circuit, for the correction of the errors complained of and herewith as-

signed, be allowed and that an order be made fixing the amount of security to be given by plaintiff in error conditioned as the law directs, and upon giving such bond as may be required that all further proceedings may be suspended until the determination of said writ of error by the Circuit Court of Appeals.

JOSEPH MUSGROVE.

By EARL F. DRAKE,
TOWNSEND, STOCKTON & DRAKE.

By EARL F. DRAKE,
Attorneys for Petitioner in Error.

[Endorsed]: Received copy of foregoing petition June 1, 1923.

F. H. BERNARD,
U. S. Attorney.

Filed May 26, 1923. C. R. McFall, Clerk United States District Court for the District of Arizona. [21]

In the District Court of the United States for the District of Arizona.

No. C—1872.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. A. BOSTICK,

Defendant;

GEORGE E. JACKSON, Doing Business Under the Trade Name and Style of SOUTHERN ARIZONA AUTO COMPANY,

Intervener.

Assignments of Error.

Now comes George E. Jackson, doing business under the trade name and style of Southern Arizona Auto Company, plaintiff in error in the above numbered and entitled cause, and in connection with his petition for a writ of error in this cause, assigns the following errors which the plaintiff in error avers occurred on the trial thereof, and upon which he relies to reverse the judgment entered herein as appears of record:

That the Court erred in denying the petition of the intervenor, plaintiff in error herein, and in ordering the automobile involved in these proceedings sold without recognition of any right of plaintiff to a return of the same, or in or to any of the proceeds thereof, notwithstanding the fact that the Court found that the intervenor was the condit-

ional vendor of said automobile, and had no knowledge that said automobile was used or was to be used in the unlawful transportation of liquor.

JOSEPH MUSGROVE.

By EARL F. DRAKE,
TOWNSEND, STOCKTON & DRAKE.

By EARL F. DRAKE,
Attorneys for Intervener and Plaintiff in Error.

[Endorsed]: Received copy of foregoing assignments of error, June 1, 1923.

F. H. BERNARD,
U. S. Attorney. [22]

Filed May 26, 1923. C. R. McFall, Clerk United States District Court for the District of Arizona. [23]

In the District Court of the United States for the District of Arizona.

No. C—1872.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

J. A. BOSTICK,
Defendant;

GEORGE E. JACKSON, Doing Business Under
the Trade Name and Style of SOUTHERN
ARIZONA AUTO COMPANY,

Intervener.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS, That we, George E. Jackson, doing business under the trade name and style of Southern Arizona Auto Company, as principal, and National Surety Company, as surety, are held and firmly bound unto The United States of America in the full and just sum of Five Hundred (\$500.00) Dollars, to be paid to the said The United States of America, its attorneys, successors or assigns, to which payment well and truly to be made we bind ourselves, our successors, assigns, executors, and administrators jointly and severally by these presents.

Signed and dated this the 25th day of May, A. D. 1923.

WHEREAS, lately at a regular term of the District Court of the United States, for the District of Arizona, sitting at Tucson, in said District, in a suit pending in said Court between The United States of America, as plaintiff, and J. A. Bostick, as defendant, and George E. Jackson, doing business under the trade name and style of Southern Arizona Auto Company, as intervener, cause No. C—1872, on the law docket of said Court, final judgment was rendered against the said George [24] E. Jackson, doing business under the trade name and style of Southern Arizona Auto Company, and his petition was denied, and the said George E. Jackson has obtained a writ of error and filed a copy thereof in the Clerk's office of the said Court to reverse the judgment of the said Court in the aforesaid suit,

and F. H. Bernard, Esquire, United States District Attorney, on behalf of the said United States of America, defendant in error, was signed and filed in said cause a written waiver of service of citation requiring the defendant in error to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco in the State of California, according to law, within thirty days from date hereof.

Now the condition of the above obligation is such that if the said George E. Jackson, doing business under the trade name and style of Southern Arizona Auto Company, shall prosecute his writ of error to vacate and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

GEORGE E. JACKSON.

By TOWNSEND, STOCKTON & DRAKE,
Attorneys-in-fact,
Principal.

NATIONAL SURETY COMPANY,
By B. C. STURGES,
Attorney-in-fact,
Surety.

Approved this 26 day of May, 1923.

WM. H. SAWTELLE,
United States Judge.

[Endorsed]: Received copy of foregoing bond
June 1, 1923.

F. H. BERNARD,
U. S. Attorney.

Filed May 26, 1923. C. R. McFall, Clerk United States District Court for the District of Arizona. [25]

In the Circuit Court of Appeals of the Ninth Circuit.

No. —.

GEORGE E. JACKSON, Doing Business Under the Trade Name and Style of SOUTHERN ARIZONA AUTO COMPANY,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

Writ of Error (Copy).

United States of America,—ss.

The President of the United States, WARREN G. HARDING, to the Honorable Judge of the District Court of the United States, for the District of Arizona, GREETINGS:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you between George E. Jackson, doing business under the trade name and style of Southern Arizona Auto Company, plaintiff in error, and The United States of America, defendant in error, a manifest error has happened to the damage of George E. Jackson, doing business under the trade name and style of Southern Arizona Auto Company, plaintiff in error,

as by said complaint appears, and we being willing that error, if any hath been, should be corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you if judgment be therein given, that under your seal you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, in the State of California, where said Court is sitting, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and [26] there held, and the record and proceedings aforesaid being inspected, the said United States Court of Appeals may cause further to be done therein to correct the error what of right, and according to the laws and customs of the United States should be done.

WITNESS the Honorable WILLIAM H. TAFT, Chief Justice of the United States, this the 26th day of May, 1923.

[Seal] C. R. McFALL,
Clerk of the United States District Court for the
District of Arizona.

Allowed this the 26 day of May, 1923.

WM. H. SAWTELLE,
United States Judge.

Return on Writ of Error.

The answer of the Judge of the District Court of the United States, for the District of Arizona, to the within writ of error:

As within commanded, I certify under the seal of my said District Court, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, within mentioned, at the day and place within contained.

By the Court:

[Seal]

C. R. McFALL,

Clerk U. S. District Court, District of Arizona.

[Endorsed]: Received copy of foregoing writ
June 1, 1923.

F. H. BERNARD,

U. S. Attorney.

Filed May 26, 1923. C. R. McFall, Clerk United States District Court for the District of Arizona. [27]

In the District Court of the United States for the District of Arizona.

No. C—1872 (TUCSON).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. A. BOSTICK,

Defendant,

GEORGE E. JACKSON, Doing Business Under
the Trade Name and Style of SOUTHERN
ARIZONA AUTO COMPANY,

Intervener.

Citation (Copy).

To the United States of America, Defendant in Error:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be held in the City of San Francisco, California, on the 25th day of June, A. D. 1923, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States, for the District of Arizona, wherein George E. Jackson, doing business under the trade name and style of Southern Arizona Auto Company, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable WM. H. SAWTELLE, U. S. District Judge, Dist. of Arizona, this 31st day of May, A. D. 1923.

WM. H. SAWTELLE,
United States District Judge.

I hereby, this 31st day of May, A. D. 1923, accept due personal service of the foregoing citation on behalf of the United States of America, defendant in error.

FREDERICK H. BERNARD,
Attorney for the United States.

[Endorsed]: Filed May 31, 1923. C. R. McFall,
Clerk United States District Court for the District
of Arizona. [28]

In the District Court of the United States for the
District of Arizona.

No. C—1872.

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.

J. A. BOSTICK,
Defendant;

GEORGE E. JACKSON, Doing Business Under
the Trade Name and Style of SOUTHERN
ARIZONA AUTO COMPANY,
Intervener.

**Praecipe Setting Forth Parts of Record to be In-
corporated and Attached to Return on Writ of
Error.**

To the Clerk of the United States District Court
for the District of Arizona:

Please take notice that you are requested to in-
corporate and attach to the return on the writ of
error in the above action the following papers
and parts of the record in said cause, to wit:

- (1) Criminal information against the above-named
defendant and any plea or answer thereto.
- (2) Judgment of conviction and record as to pay-
ment of fine.

- (3) All minute entries of clerk pertaining to the proceedings in said criminal proceeding and the proceedings with reference to confiscation of automobile.
- (4) Petition in intervention of George E. Jackson, third party claim and any answer or pleading thereto.
- (5) Opinion and judgment of Court in connection therewith.
- (6) Petition for writ of error.
- (7) Assignments of error.
- (8) Bond and approval.
- (9) Allowance of writ of error. [29]
- (10) Writ of error.
- (11) Citation in error.
- (12) Clerk's certificate.

JOSEPH MUSGROVE.

By EARL F. DRAKE.

TOWNSEND, STOCKTON & DRAKE.

By EARL F. DRAKE.

[Endorsed]: Received copy of foregoing praecipe June 1, 1923.

F. H. BERNARD,
U. S. Attorney.

Filed May 30, 1923. C. R. McFall, Clerk United States District Court for the District of Arizona. [30]

In the District Court of the United States for the District of Arizona.

No. C—1872 (TUCSON).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. A. BOSTICK,

Defendant;

GEORGE E. JACKSON, Doing Business Under the Trade Name and Style of SOUTHERN ARIZONA AUTO COMPANY,

Intervener.

Citation (Original).

To the United States of America, Defendant in Error:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be held in the City of San Francisco, California, on the 25th day of June, A. D. 1923, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the District of Arizona, wherein George E. Jackson, doing business under the trade name and style of Southern Arizona Auto Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error, as in said writ of error mentioned, should not be corrected

and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable WM. H. SAWTELLE, U. S. District Judge, Dist. of Arizona, this 31st day of May, A. D. 1923.

WM. H. SAWTELLE,
United States District Judge.

I hereby, this 31st day of May, A. D. 1923, accept due personal service of the foregoing citation on behalf of the United States of America, defendant in error.

FREDERICK H. BERNARD,
Attorney for the United States.

Filed May 31, 1923. C. R. McFall, Clerk
United States District Court for the District of
Arizona.

In the Circuit Court of Appeals of the Ninth Circuit.

No. —.

GEORGE E. JACKSON, Doing Business Under
the Trade Name and Style of SOUTHERN
ARIZONA AUTO COMPANY,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

Writ of Error (Original).

United States of America,—ss.

The President of the United States, WARREN G. HARDING, to the Honorable Judge of the District Court of the United States for the District of Arizona, GREETINGS:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you between George E. Jackson, doing business under the trade name and style of Southern Arizona Auto Company, plaintiff in error, and the United States of America, defendant in error, a manifest error has happened to the damage of George E. Jackson, doing business under the trade name and style of Southern Arizona Auto Company, plaintiff in error, as by said complaint appears, and we being willing that error, if any hath been, should be corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you if judgment be therein given, that under your seal you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco in the State of California, where said court is sitting, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held, and the record and proceedings aforesaid being inspected,

the said United States Court of Appeals may cause further to be done therein to correct the error what of right, and according to the laws and customs of the United States should be done.

WITNESS the Honorable WILLIAM H. TAFT, Chief Justice of the United States, this the 26th day of May, 1923.

[Seal]

C. R. McFALL,

Clerk of the United States District Court for the District of Arizona.

Allowed this the 26th day of May, 1923.

WM. H. SAWTELLE,

United States Judge.

Return on Writ of Error.

The answer of the Judge of the District Court of the United States, for the District of Arizona, to the within writ of error:

As within commanded, I certify under the seal of my said District Court, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, within mentioned, at the day and place within contained.

By the Court::

[Seal]

C. R. McFALL,

Clerk U. S. District Court, District of Arizona.

Filed May 26, 1923. C. R. McFall, Clerk United States District Court for the District of Arizona.

Received copy of foregoing writ June 1, 1923,
F. H. BERNARD,
U. S. Attorney.

In the District Court of the United States for the
District of Arizona.

No. C—1872 (TUCSON).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JEWEL A. BOSTICK,

Defendant;

GEORGE E. JACKSON, Doing Business Under
the Trade Name and Style of SOUTHERN
ARIZONA AUTO COMPANY,

Intervener.

**Certificate of Clerk U. S. District Court to Tran-
script of Record.**

United States of America,
District of Arizona,—ss.

I, C. R. McFall, Clerk of the District Court of the
United States for the District of Arizona, do hereby
certify that I am the custodian of the records,
papers and files of the United States District Court
for the District of Arizona, including the records,
papers and files in the case of the United States of
America, Plaintiff, vs. Jewel A. Bostick, Defendant,

said case being Number C—1872 (Tucson) on the Docket of said Court.

I further certify that the attached transcript contains a full, true and correct transcript of the proceedings in said case of all papers filed therein, together with the endorsements of filing thereon, as set forth in the praecipe filed in said case and made a part of the transcript attached hereto, as the same appear from the originals of the record and on file in my office as such Clerk, in the city of Tucson, State and District aforesaid.

I further certify that the Clerk's fees for preparing the transcript of this record amount to Twenty-one and 5/100 (\$21.05) Dollars, and that said sum has been paid to me by counsel for intervener, George E. Jackson, doing business under the trade name and style of Southern Arizona Auto Company.

I further certify that the original writ of error and the original Citation issued in this cause are attached hereto.

WITNESS my hand and the seal of said court, this 5th day of June, A. D. 1923.

[Seal] C. R. McFALL,
Clerk of the United States District Court, District
of Arizona.

[Endorsed:] No. 4046. United States Circuit
Court of Appeals for the Ninth Circuit. George E.
Jackson, Doing Business Under the Trade Name

and Style of Southern Arizona Auto Company,
Plaintiff in Error, vs. The United States of America,
Defendant in Error. Transcript of Record. Upon
Writ of Error to the United States District Court
of the District of Arizona.

Received June 7, 1923.

F. D. MONCKTON,
Clerk.

Filed June 14, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.